

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**R. CAESER AUGUSTUS
DIGIANVITTORIO,**

Plaintiff,

v.

**SANTUARY CITY OF
PHILADELPHIA, et al.,**

Defendants.

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CIVIL ACTION

No. 19-4532

ORDER

AND NOW, this 1st day of October, 2019, upon consideration of *pro se* Plaintiff’s Motion and “Complaint and Request for Injunction, Need TRO – Ex Parti To Stop Oct 1st 2019 Sheriff Sale” (ECF Nos. 1, 2), and Plaintiff’s documentation in support thereof, I find as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff filed a Motion for a TRO, seeking to prevent an October 1, 2019 sheriff’s sale of the property located at 3434 Weymouth Street, Philadelphia, Pennsylvania 19134. (ECF No. 2.)
2. Plaintiff’s Motion indicates that a “Demand Notice,” dated September 26, 2019, was hand delivered to “EQC NINE PENN CENTER PROP, and or Silverstein Properties - Owner or Management for 1735 Market St. . . . and current Occupants at 1735 Market Street, Suite #3750 Philadelphia, Pennsylvania 19103.” (ECF No. 2, p. 1-2.) Summonses were issued as to all defendants, but there has been no formal service in accordance with Fed. R. Civ. P. 4. No defendant has appeared.

LEGAL STANDARD

3. The test for reviewing a preliminary injunction and a TRO are the same. NutraSweet Co. v. Vit-Mar Enters., Inc., 112 F.3d 689, 693 (3d Cir. 1997). A TRO “should be granted only if ‘(1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest.’” NutraSweet Co. v. Vit-Mar Enters., Inc., 176 F.3d 151, 153 (3d Cir. 1999) (quoting Maldonado v. Houstoun, 157 F.3d 179, 184 (3d Cir. 1998)). The district court is afforded discretion to grant or deny a TRO, as such orders are not a matter of right. Smith v. Litton Loan Servicing, LP, 2005 WL 289927, at *6 (E.D. Pa. Feb. 4, 2005). “Additionally, a TRO can be entered or denied without a hearing if the Court determines that there are no relevant facts in dispute.” Id.; see also Bradley v. Pittsburgh Board of Educ., 910 F.2d 1172, 1175-76 (3d Cir.1990).

DISCUSSION

4. Here, in a separate state-court proceeding, Plaintiff has litigated the real estate tax lien issues and resultant sheriff sale relative to the property located at 3434 Weymouth Street, Philadelphia, Pennsylvania. See City of Philadelphia vs. DiGianvittorio, No. 1804T0598 (Phila. C.C.P. 2018) (An August 6, 2019 Order mandated that the premises of 3434 Weymouth Street shall be sold at a sheriff’s sale, pursuant to 53 P.S. Sec. 7101, et seq.). Independent of the TRO standards, the Third Circuit has clarified that the “Rooker–Feldman doctrine bars federal jurisdiction under two circumstances: if the claim was actually litigated in state court or if the claim is inextricably intertwined with the state adjudication.” ITT Corp. v. Intelnet Int’l, 366 F.3d 205, 210 (3d Cir. 2004)

(internal citations and quotations omitted). Plaintiff's present request for a TRO essentially seeks this Court's review of that state-court proceeding for the same property, which is barred by the Rooker–Feldman doctrine. Therefore, Plaintiff has failed to establish a likelihood of success on the merits.

WHEREFORE, for the reasons set forth above, it is hereby **ORDERED** that Plaintiff's Motion requesting a temporary restraining order and Plaintiff's Complaint (ECF Nos. 1, 2) are hereby **DISMISSED**.

BY THE COURT:

/s/ Mitchell S. Goldberg

MITCHELL S. GOLDBERG, J.